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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,653	09/30/2003	Gordon L. McGregor	MI/219A	9510

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EXAMINER	
SPERTY, ARDEN B	

ART UNIT	PAPER NUMBER
1771	

DATE MAILED: 09/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

T·D

Office Action Summary	**Application No.** 10/677,653	**Applicant(s)** MCGREGOR ET AL.	
	Examiner Arden B. Sperty	**Art Unit** 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *Election 7/25/05*.
2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1 and 3-30* is/are pending in the application.
4a) Of the above claim(s) *6* is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1,3-5 and 7-30* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a)☐ All b)☐ Some * c)☐ None of:
1.☐ Certified copies of the priority documents have been received.
2.☐ Certified copies of the priority documents have been received in Application No. _____.
3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *several*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

NON-FINAL OFFICE ACTION

Election/Restrictions

1. Applicant's election of claims drawn to a polymeric insect screen species is acknowledged. Claims drawn to a "non-metallic" material are generic to the elected species, and are examined accordingly. Claims drawn to a metallic screen are withdrawn; only claim 6 is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species. Election was made **without** traverse in the reply filed on 7/25/05.

Information Disclosure Statement

2. The information disclosure statements (IDS) submitted on 01/09/04 and 7/25/05 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 3-5, and 7-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5908704 to Friedman et al.

The Friedman reference teaches a fluoropolymer fiber mesh (col. 5, lines 15-19). It has been held that optimizing such factors as the number of warp and weft elements, the dimensions of warp and weft elements, the distance between adjacent warp element and adjacent weft elements, and the bonding of warp and weft intersections, are result effective variables. For example, the amount of space between adjacent warp and weft elements would directly affect the dimensional stability of the mesh. The diameter of the fibers directly affects the strength of the entire mesh. Bonding at fiber intersections directly affects the strength of the mesh. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the fiber diameters and warp and weft spacing required in claim 1, and the intersectional bonding of claim 28, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch,* 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have optimized these variables, motivated by the desire to create a mesh with desirable strength, durability, and appearance.

Regarding claim 9, it has been held to be within the general skill level of one in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

Regarding claim 15, the mesh of the Friedman reference is intended for use within window assemblies, therefore a frame is implied. The examiner takes official notice that groove and spline window frame construction is notoriously well-known in the art, and therefore would have been obvious to one of ordinary skill in the field of the prior art.

5. Claims 1, 3-5, and 7-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3911990 to Hoover et al.

The Hoover reference teaches a Teflon (PTFE) window screen (col. 4, lines 47-57). It has been held that optimizing such factors as the number of warp and weft elements, the dimensions of warp and weft elements, the distance between adjacent warp element and adjacent weft elements, and the bonding of warp and weft intersections, are result effective variables. For example, the amount of space between adjacent warp and weft elements would directly affect the dimensional stability of the fabric. The diameter of the fibers directly affects the strength of the entire screen. Bonding at fiber intersections directly affects the strength of the screen. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the fiber diameters and warp and weft spacing required in claim 1, and the intersectional bonding of claim 28, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch,* 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have optimized these variables, motivated by the desire to create a mesh with desirable strength, durability, and appearance.

Regarding claim 9, it has been held to be within the general skill level of one in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. The similar properties, including those of chemical resistance, working temperature, and color, shared by PTFE and PVDF make these excellent functional equivalents. Therefore use of PVDF would have been obvious to a person of ordinary skill practicing the prior art.

Regarding claim 15, the mesh of the Hoover reference is intended for use within window assemblies, therefore a frame is implied. The examiner takes official notice that groove and spline window frame construction is notoriously well-known in the art, and therefore would have been obvious to one of ordinary skill in the field of the prior art.

6. Claims 1, 3-5, and 7-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 3911990 to Hoover et al., further in view of US Patent 6880612 to Pylkki et al.

The Hoover reference teaches a Teflon (PTFE) window screen (col. 4, lines 47-57). Hoover is not concerned with the particulars of the screen, but is more concerned with the window construction. The Pylkki reference teaches the particulars of reduced visibility screens used in windows. Therefore, it would have been obvious to use the direction of Pylkki for the particulars of the screen portion of Hoover, motivated by the desire to minimize the visibility of the screen. The particulars disclosed by Pylkki include the fiber diameter and spacing claimed by Applicant, as described throughout the Pylkki reference, specifically in columns 2, 10, 12.The transmittance property is further disclosed (col. 5, lines 8+). Since the dimensions and materials of the Hoover Pylkki combination are the same as the claimed dimensions and materials, it follows that the properties of visual clarity and specular transmission will also be the same. Further, bonding at fiber intersections directly affects the strength of a screen. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ intersectional bonding, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch,* 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have optimized the many variables, motivated by the desire to create a mesh with desirable strength, durability, and appearance.

Regarding claim 9, it has been held to be within the general skill level of one in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. The similar properties, including those of chemical resistance, working temperature, and color, shared by PTFE and PVDF make these excellent functional equivalents. Therefore use of PVDF would have been obvious to a person of ordinary skill practicing the prior art.

Regarding claim 15, the mesh of the Hoover reference is intended for use within window assemblies, therefore a frame is implied. The examiner takes official notice that groove and spline window frame construction is notoriously well-known in the art, and therefore would have been obvious to one of ordinary skill in the field of the prior art.

7. Claims 1, 3-5, 7-14, and 16-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 6517594 to Olander et al.

The Olander reference teaches a mesh including 25% PVDF (col. 9, lines 49-51). It has been held that optimizing such factors as the number of warp and weft elements, the dimensions of warp and weft elements, the distance between adjacent warp element and adjacent weft elements, and the bonding of warp and weft intersections, are result effective variables. For example, the greater the amount of space between adjacent warp and weft elements would directly affect the dimensional stability of the mesh. The diameter of the fibers directly affects the strength of the entire mesh. Bonding at fiber intersections directly affects the strength of the mesh. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the fiber diameters and warp and weft spacing required in claim 1, and the intersectional bonding of claim 28, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch,* 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have optimized these variables, motivated by the desire to create a mesh with desirable strength, durability, and air-permeability.

8. Claims 1, 3-5, 7-14, 16-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent 5873999 to Gaiser.

The Gaiser reference teaches a woven PVDF mesh (col. 4, lines 19-29). It has been held that optimizing such factors as the number of warp and weft elements, the dimensions of warp and weft elements, the distance between adjacent warp element and adjacent weft elements, and the bonding of warp and weft intersections, are result effective variables. For example, the greater the amount of space between adjacent warp and weft elements would directly affect the dimensional stability of the mesh. The diameter of the fibers directly affects the strength of the entire mesh. Bonding at fiber intersections directly affects the strength of the mesh. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the fiber diameters and warp and weft spacing required in claim 1, and the intersectional bonding of claim 47, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch,* 617 F. 2d 272, 205 USPQ 215 (CCPA 1980). In the present invention, one would have optimized these variables, motivated by the desire to create a mesh with desirable strength, durability, and air-permeability.

Double Patenting

9. Claims 1, 3-5, and 7-30 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1,3-4, 6-49 of copending Application No. 10/405104. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are drawn to overlapping species.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. A plethora of related art is available in the field of medicine, in the form of fluoropolymer meshes such as those described in the article "New developments in hernia surgery," available for CME credit on Medscape.com, dated December 29, 1999.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arden B. Sperty whose telephone number is (571)272-1543. The examiner can normally be reached on M-Th, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571)272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ABSperty
Arden B. Sperty
Examiner
Art Unit 1771

August 23, 2005

CHERYL A. JUSKA
PRIMARY EXAMINER